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Commissioner

State of Georgia  
**Department of Revenue**  
Legal Affairs & Tax Policy  
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Frank M. O'Connell  
Director

### **NOTICE SUT 2016-004**

RE: Amendment of Rule 560-12-2-.03 Agriculture Exemptions.

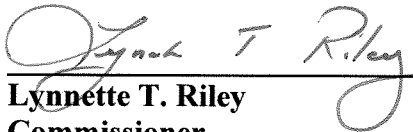
#### **TO ALL INTERESTED PERSONS AND PARTIES:**

In compliance with O.C.G.A. § 50-13-4, the Georgia Department of Revenue gives notice that it proposes to amend Rule 560-12-2-.03 Agriculture Exemptions.

The Department of Revenue will consider the amendment of Rule 560-12-2-.03 at 10:00 a.m. on June 28, 2016 in Suite 15210 of the Department's headquarters at the address below.

The Department must receive all comments regarding the amendment of the above-referenced rule from interested persons and parties no later than 10:00 a.m. on June 28, 2016. Written comments must be sent to: Commissioner, Georgia Department of Revenue, 1800 Century Blvd. N.E., Suite 15300, Atlanta, GA 30345-3205. Electronic comments must be sent to [regcomments@dor.ga.gov](mailto:regcomments@dor.ga.gov). Facsimile comments must be sent to (404) 417-2293. Please reference "Notice Number SUT 2016-004" on all comments.

Dated: May 17, 2016.

  
**Lynnette T. Riley**  
**Commissioner**  
**Georgia Department of Revenue**

## **SYNOPSIS**

### **GEORGIA DEPARTMENT OF REVENUE SALES AND USE TAX DIVISION**

#### **CHAPTER 560-12-2 SUBSTANTIVE RULES AND REGULATIONS**

##### **560-12-2-.03. Agriculture Exemptions.**

The Georgia Department of Revenue proposes to amend Rule 560-12-2-.03 “Agriculture Exemptions” by making changes as indicated by underline and strikethrough on the attached copy of the Rule.

The purpose of the amended Rule is to correct typographical errors, make stylistic changes, and conform the Rule to O.C.G.A. § 48-8-3.3 as amended in 2016. The main features of the Rule are as follows:

- Paragraph 1, Purpose.
- Paragraph 2, Definitions.
- Paragraph 3, Scope of exemptions: Activities that are not Agricultural Operations.
- Paragraph 4, Exemption for Agricultural Production Inputs.
- Paragraph 5, Exemption for Agricultural Machinery and Equipment.
- Paragraph 6, Exemption for Energy Used in Agriculture.
- Paragraph 7, Certificates of Exemption.
- Paragraph 8, Non-transferability.
- Paragraph 9, Manufacturers.
- Paragraph 10, Contractors.

1                                   **RULES**  
2                                   **OF**  
3                                   **DEPARTMENT OF REVENUE**  
4                                   **SALES AND USE TAX DIVISION**

5  
6                                   **CHAPTER 560-12-2**  
7                                   **SUBSTANTIVE RULES AND REGULATIONS**

8  
9                   **560-12-2-.03. Agriculture Exemptions.**

10       **(1) Purpose.** This Rule addresses the sales and use tax  
11 exemptions in O.C.G.A. § 48-8-3.3 for ~~agricultural produc-~~  
12 ~~tion inputs~~Agricultural Production Inputs, ~~agricultural~~  
13 ~~machinery and equipment~~Agricultural Machinery and  
14 Equipment, and ~~energy used in agriculture~~Energy Used in  
15 Agriculture.

16       **(2) Definitions.** For purposes of this Rule only:

17       **(a)** ~~“Agricultural machinery and equipment~~Agricultural  
18 Machinery and Equipment” means:

19       1. ~~Machinery and equipment~~Machinery and Equipment  
20 used in ~~agricultural operations~~Agricultural Operations,  
21 examples of which are provided in paragraph (5); or

22       2. ~~Machinery and equipment~~Machinery or Equipment  
23 expressly included in O.C.G.A. § 48-8-3.3(a)(1)(B):

24       **(i)** Farm tractors and attachments to the tractors used in  
25 ~~agricultural operations~~Agricultural Operations;

26       **(ii)** Any off-road vehicle used in ~~agricultural opera-~~  
27 ~~tions~~Agricultural Operations;

- 28     **(iii)** Self-propelled fertilizer or chemical application  
29     ~~equipment~~Equipment sold to persons engaged primarily in  
30     producing ~~agricultural products~~Agricultural Products for  
31     sale and that are used exclusively in tilling, planting,  
32     cultivating, and harvesting ~~agricultural products~~Agricultural Products;  
33     tural Products;
- 34     **(iv)** Devices and containers used in the transport and  
35     shipment of ~~agricultural products~~Agricultural Products;
- 36     **(v)** Aircraft exclusively used for spraying agricultural  
37     crops;
- 38     **(vi)** Pecan sprayers, pecan shakers, and other ~~equip-~~  
39     ~~ment~~Equipment used in harvesting pecans sold to persons  
40     engaged in the growing, harvesting, and production of  
41     pecans;
- 42     **(vii)** Off-road ~~equipment~~Equipment and related at-  
43     tachments that are sold to or used by persons engaged  
44     primarily in the growing or harvesting of timber and that  
45     are used exclusively in site preparation, planting, culti-  
46     vating, or harvesting timber;
- 47     **(viii)** Grain bins and attachments to grain bins that are  
48     used in ~~agricultural operations~~Agricultural Operations  
49     regardless of whether such grain bins or attachments  
50     become incorporated into ~~real property~~Real Property;
- 51     **(ix)** Trailers used to transport ~~agricultural prod-~~  
52     ~~ucts~~Agricultural Products;

53       (x) All-terrain vehicles and multi-passenger  
54 rough-terrain vehicles that are used in ~~agricultural oper-~~  
55 ~~ations~~Agricultural Operations; and

56       (xi) Any ~~repair~~Repair, ~~replacement~~Replacement, or  
57 ~~component~~Component ~~part~~Parts installed on ~~agricultural~~  
58 ~~machinery and equipment~~Agricultural Machinery and  
59 Equipment.

60       (b) “~~Agricultural operations~~Agricultural Operations” is  
61 used synonymously with the term “~~agricultural pur-~~  
62 ~~poses~~Agricultural Purposes.”

63       1. Except as otherwise provided in this Rule, “~~agricul-~~  
64 ~~tural operations~~Agricultural Operations” means the  
65 following activities:

66       (i) Raising, growing, harvesting, or storing of crops,  
67 including but not limited to soil preparation and crop  
68 production services, such as plowing, fertilizing, seed bed  
69 preparation, planting, cultivating, and crop protecting  
70 services;

71       (ii) Feeding, breeding, or managing ~~livestock~~Livestock,  
72 equine, or poultry;

73       (iii) Producing or storing feed for use in the production of  
74 ~~livestock~~Livestock, including but not limited to cattle,  
75 calves, swine, hogs, goats, sheep, equine, and rabbits, or  
76 for use in the production of poultry, including but not  
77 limited to chickens, hens, ratites, and turkeys;

78     **(iv)** Producing plants, trees, fowl, equine, or other ~~ani-~~  
79     ~~mal~~Animals;

80     **(v)** Producing aquacultural, horticultural, viticultural,  
81     silvicultural, grass sod, dairy, ~~livestock~~Livestock, poultry,  
82     egg, and apiarian products;

83     **(vi)** Processing poultry;

84     **(vii)** Post-harvest services on crops with the intent of  
85     preparing them for market or further processing, including  
86     but not limited to crop cleaning, drying, shelling, fumi-  
87     gating, curing, sorting, grading, packing, ginning, canning,  
88     pickling and cooling.

89     **(viii)** Slaughtering poultry and other ~~animal~~Animals;  
90     and

91     **(ix)** Manufacturing dairy products.

92     **2. “~~Agricultural operations~~Agricultural Operations”**  
93     excludes constructing, installing, altering, repairing,  
94     dismantling, or demolishing ~~real property~~Real Property  
95     structures or ~~fixture~~Fixtures, including but not limited to  
96     grain bins, irrigation equipment, and fencing.

97     **(c) “~~Agricultural production inputs~~Agricultural Produc-**  
98     **tion Inputs”** means the following when used for  
99     ~~agricultural purposes~~Agricultural Purposes:

100     **1.** Seed;

101     **2.** Seedlings;

- 102      3. Plants grown from seed, cuttings, or liners;
- 103      4. Fertilizers;
- 104      5. Insecticides;
- 105      6. Livestock and poultry feeds, drugs, and instruments  
106      used for the administration of such drugs;
- 107      7. Fencing products and materials regardless of whether  
108      the fencing products or materials become incorporated into  
109      ~~real property~~Real Property;
- 110      8. Fungicides;
- 111      9. Rodenticides;
- 112      10. Herbicides;
- 113      11. Defoliants;
- 114      12. Soil fumigants;
- 115      13. Plant growth regulating chemicals;
- 116      14. Desiccants, including but not limited to shavings and  
117      sawdust from wood, peanut hulls, fuller's earth, straw, and  
118      hay;
- 119      15. Feed for ~~animal~~Animals, including but not limited to  
120      ~~livestock~~Livestock, fish, equine, hogs, or poultry;
- 121      16. Sugar used as food for honeybees kept for the com-  
122      mercial production of honey, beeswax, and honeybees;

123     **17.** Cattle, hogs, sheep, equine, poultry, or bees when  
124 sold for breeding purposes;

125     **18.** Ice or other refrigerants, including but not limited to  
126 nitrogen, carbon dioxide, ammonia, and propylene glycol  
127 used in the processing for market or the chilling of ~~agri-~~  
128 ~~cultural products~~Agricultural Products in storage  
129 facilities, rooms, compartments, or delivery trucks;

130     **19.** Materials, containers, crates, boxes, labels, sacks,  
131 bags, or bottles used for packaging ~~agricultural prod-~~  
132 ~~ucts~~Agricultural Products when the product is either sold  
133 in the containers, sacks, bags, or bottles directly to the  
134 consumer or when such use is incidental to the sale of the  
135 product for resale; and

136     **20.** Containers, plastic, canvas, and other fabrics used in  
137 the care and raising of ~~agricultural products~~Agricultural  
138 Products or canvas used in covering feed bins, silos,  
139 greenhouses, and other similar storage structures.

140     **(d)** "~~Agricultural products~~Agricultural Products" means  
141 items produced by ~~agricultural operations~~Agricultural  
142 Operations.

143     **(e)** "Animals" is synonymous with "~~livestock~~Livestock"  
144 and means living organisms that are commonly regarded  
145 as farm animals, organisms that produce tangible personal  
146 property for sale, or organisms that are processed, manu-  
147 factured, or converted into articles of tangible personal  
148 property for sale. The term does not include living organ-

149 isms that are commonly regarded as domestic pets or  
150 companion animals.

151 (f) "Aquaculture" means an operation or integrated se-  
152 ries of operations in the growing of marine or freshwater  
153 organisms for sale. Aquaculture involves the cultivating of  
154 aquatic populations under controlled conditions, as con-  
155 trasted with commercial fishing, where the conditions are  
156 not controlled.

157 (g) ~~Consumables~~ Consumable Supplies means tangible  
158 personal property, other than ~~machin~~ Machinery, equip-  
159 ~~ment~~ Equipment, agricultural production  
160 ~~inputs~~ Agricultural Production Inputs, and energy, that is  
161 readily disposable, or is immediately consumed or ex-  
162 pended ~~during an agricultural operation.~~

163 (h) ~~Energy used in agriculture~~ Energy Used in Agricul-  
164 ture means fuels used for ~~agricultural~~  
165 ~~purposes~~ Agricultural Purposes, other than fuels subject to  
166 "prepaid state tax" as defined in O.C.G.A. § 48-8-2.

167 (i) "Farm" means a parcel or tract of land or contiguous  
168 tracts or parcels of land, or, for ~~aquaculture~~ Aquaculture,  
169 an area of lake, river or sea, devoted primarily to growing  
170 or raising, and actively maintaining, plants and ~~ani-~~  
171 ~~mal~~ Animals for agricultural purposes Agricultural  
172 Purposes.

173 (j) "Fixtures" means tangible personal property that has  
174 been installed or attached to land or to any building  
175 thereon and that is intended to remain permanently in its

176 place. A consideration for whether property is a ~~fixture-~~  
177 Fixture is whether its removal would cause significant  
178 damage to such property or to the ~~real property~~Real  
179 Property to which it is attached. Fixtures are classified as  
180 ~~real property~~Real Property. Examples of ~~fixture~~Fixtures  
181 include but are not limited to plumbing, lighting fixtures,  
182 slabs, and foundations.

183 (k) ~~Local sales and use tax~~Local Sales and Use Tax  
184 means any sales or use tax that is levied and imposed in an  
185 area consisting of less than the entire state, however  
186 authorized.

187 (l) ~~Machinery and equipment~~Machinery is used syn-  
188 onymously with "Equipment" and means any device or  
189 apparatus other than real propertyReal Property, agri-  
190 cultural production inputsAgricultural Production Inputs,  
191 energy, and consumablesConsumable Supplies. The terms  
192 "machinery and equipmentMachinery" and "Equipment"  
193 includes repairRepair, and replacementReplacement, or  
194 Component partParts.

195 (m) ~~Motor vehicle~~Motor Vehicle means ~~every~~any  
196 self-propelled vehicle designed for operation or required to  
197 be licensed for operation upon the public highways.

198 (n) ~~Qualified agricultural producer~~Qualified Agricul-  
199 tural Producer means a person defined as such by the  
200 Georgia Department of Agriculture.

201     ~~(o) “Real property~~Real Property” means land, ~~any~~  
202     ~~buildings, or thereon, and any fixture~~Fixtures attached  
203     ~~theretoto land or buildings.~~

204     ~~(p) “Repair Part,” or “Replacement Ppart,” or “Compo-~~  
205     ~~nent Part” means a part for any a~~Agricultural  
206     ~~machin~~Machinery or and equipmentEquipment. Repair, -  
207     ~~or replacement~~Replacement, or Component partParts  
208     must be used to maintain, repair, restore, install, or  
209     upgrade such Agricultural machinMachinery or and  
210     ~~equipment~~Equipment. Examples of ~~repair~~Repair, and  
211     ~~replacement~~Replacement, or Component partParts may  
212     include but are not limited to oils, greases, hydraulic  
213     fluids, coolants, lubricants, and other interchangeable  
214     tooling.

215     ~~(3) Scope of exemptions for agricultural produe-~~  
216     ~~tion inputs, agricultural machinery and equipment,~~  
217     ~~and energy used in agriculture: Activities that are~~  
218     ~~not agricultural operations~~Agricultural Operations.  
219     Except as otherwise provided in this Rule, inputs, ma-  
220     chinery, equipment, and energy used in the following  
221     activities do not qualify for exemption:

222     ~~(a) Activities occurring after a finished product has been~~  
223     loaded in or on a truck or other vehicle for transport for  
224     sale;

225     ~~(b) Research and development activities;~~

226     ~~(c) Landscaping activities for recreation or beautifica-~~  
227     tion, such as the maintenance of lawns or golf courses;

228       (d) The operation of a sales facility;

229       (e) Subsistence farming, hobby farming, and activities  
230       that will generate less than \$2,500 in sales annually; and

231       (f) Administrative activities, including but not limited to  
232       sales promotion, general office work, credit and collection,  
233       purchasing, and clerical work.

234       (4) ~~Exemption for agricultural production in-~~  
235       ~~puts~~**Agricultural Production Inputs**. Sales of  
236       ~~agricultural production inputs~~**Agricultural Production**  
237       ~~Inputs~~, as defined in this Rule, to ~~qualified agricultural~~  
238       ~~producer~~**Qualified Agricultural Producers** holding a  
239       Georgia Agriculture Tax Exemption (GATE) Certificate  
240       issued by the Georgia Department of Agriculture are  
241       exempt from state sales and use tax and all ~~local sales and~~  
242       ~~use tax~~**Local Sales and Use Tax**.

243       (5) ~~Exemption for agricultural machinery and~~  
244       ~~equipment~~**Agricultural Machinery and Equipment**.  
245       Sales (including leases) of ~~agricultural machinery and~~  
246       ~~equipment~~**Agricultural Machinery and Equipment**, as  
247       defined in this Rule, to ~~qualified agricultural produc-~~  
248       ~~er~~**Qualified Agricultural Producers** holding a GATE  
249       Certificate are exempt from state sales and use tax and all  
250       ~~local sales and use tax~~**Local Sales and Use Tax**. The  
251       exemption includes ~~machinery and equipment~~**Machinery**  
252       ~~and Equipment~~ expressly listed in O.C.G.A. §  
253       48-8-3.3(a)(1)(B) and ~~machinery and equipment~~**Machinery**  
254       ~~and Equipment~~ used in ~~agricultural operations~~**Agricul-**  
255       ~~tural Operations~~**tural Operations**.

256        ~~(a) Machinery and equipment~~Machinery and  
257        Equipment used in agricultural operations~~Agri-~~  
258        cultural Operations. ~~Agricultural~~  
259        ~~operations~~Agricultural Operations can differ significantly  
260        from one to another. Thus, when determining whether  
261        ~~machin~~Machinery or ~~equipment~~Equipment is used in  
262        ~~agricultural operations~~Agricultural Operations, the  
263        Department of Revenue may evaluate the facts and  
264        circumstances of each case.

265        1. Examples of ~~machin~~Machinery or ~~equipment~~Equip-  
266        ment that are not used in ~~agricultural~~  
267        ~~operations~~Agricultural Operations at any time generally  
268        include but are not limited to:

269        (i) ~~Motor vehicle~~Motor Vehicles;

270        (ii) Power lines or transformers that provide electricity  
271        to an agricultural operation;

272        (iii) ~~Real property~~Real Property, other than grain bins,  
273        fencing, and irrigation equipment used in an ~~A~~agricultural  
274        ~~e~~Operation, including but not limited to concrete slabs and  
275        foundations, and structures or ~~fixture~~Fixtures used for  
276        ventilation, heating, cooling, illumination, communica-  
277        tions, plumbing, or the personal comfort and convenience  
278        of employees;

279        (iv) Administrative ~~machin~~Machinery or ~~equipment~~E-  
280        quipment, including computers, related computer  
281        peripherals, servers, copiers, telephones, facsimile ma-  
282        chines, office furniture, office furnishings, office supplies

283 such as paper and pencils, and educational materials used  
284 for non-agricultural functions, including but not limited to  
285 sales, marketing, research and development, accounting  
286 and payroll, and purchasing;

287 (v) Machinery or ~~equipment~~Equipment that is not op-  
288 erated under the control of the Qualified Agricultural  
289 Producer's employees or other persons under the Quali-  
290 fied aAgricultural producer's direction and control; and

291 (vi) Living organisms of any kind, including but not  
292 limited to people, ~~animal~~Animals, and bacteria utilized in  
293 irrigation.

294 2. Except as otherwise provided in this Rule, ~~machinery-~~  
295 ~~and equipment~~Machinery and Equipment used in agri-  
296 cultural operationsAgricultural Operations generally  
297 include but are not limited to ~~machinery and equip-~~  
298 ~~ment~~Machinery and Equipment used:

299 (i) In the production of poultry and eggs for sale, in-  
300 cluding but not limited to brooder bulbs and ~~to machinery-~~  
301 ~~and equipment~~Machinery and Equipment used in the  
302 cleaning or maintenance of poultry houses;

303 (ii) In the hatching and breeding of poultry and the  
304 breeding of ~~livestock~~Livestock and equine;

305 (iii) In the production, processing, and storage of fluid  
306 milk for sale;

307 (iv) In the drying, ripening, cooking, further processing,  
308 or storage of ~~agricultural products~~Agricultural Products;

- 309     ~~(v)~~ In the production of livestock or equine for sale;
- 310     ~~(vi)~~(v) In the production of poultry, eggs, fluid milk,  
311 equine, or ~~livestock~~Livestock for sale;
- 312     ~~(vii)~~(vi) For the purpose of harvesting ~~agricultural~~  
313 ~~products~~Agricultural Products to be used on the ~~farm~~Farm  
314 by that producer as feed for poultry, equine, or ~~livestock~~  
315 Livestock;
- 316     ~~(viii)~~(vii) In tilling the soil or in ~~animal~~Animal hus-  
317 bandry;
- 318     ~~(ix)~~(viii) Exclusively for irrigation of ~~agricultural prod-~~  
319 ~~ucts~~Agricultural Products, including but not limited to  
320 fruit, vegetable, and nut crops regardless of whether the  
321 irrigation ~~machin~~Machinery or ~~equipment~~Equipment  
322 becomes incorporated into ~~real property~~Real Property;
- 323     ~~(x)~~(ix) To cool ~~agricultural products~~Agricultural Prod-  
324 ucts in storage facilities;
- 325     ~~(xi)~~(x) To produce Aaquacultural products;
- 326     ~~(xii)~~(xi) To maintain, clean, repair, restore, install, or  
327 upgrade ~~a~~Agricultural ~~machin~~Machinery ~~or and equip-~~  
328 ~~ment~~Equipment;
- 329     ~~(xiii)~~(xii) To provide worker safety ~~and or~~ to protect the  
330 quality of the ~~A~~Agricultural ~~p~~Product, including but not  
331 limited to safety ~~machinery and equipment~~Machinery and  
332 Equipment required by federal or state law, gloves, ear  
333 plugs, face masks, protective eyewear, hard hats or hel-

334 mets, and breathing apparatuses, regardless of whether  
335 the items would otherwise be considered ~~consumable~~  
336 sConsumable Supplies; and

337 ~~(xiv)~~(xiii) In harvesting timber, including all off-road  
338 ~~equipment~~Equipment and related attachments used in  
339 every forestry procedure starting with the severing of a  
340 tree from the ground until and including the point at  
341 which the tree or its parts in any form has been loaded in  
342 the field in or on a truck or other vehicle for transport to  
343 the place of use. Such off-road ~~equipment~~Equipment  
344 includes but is not limited to skidders, feller bunchers,  
345 debarkers, delimbers, chip harvesters, tub-grinders, woods  
346 cutters, chippers of all types, loaders of all types, dozers,  
347 mid-motor graders, and the related attachments.

348 **3. Primary purpose.** Except as otherwise provided in  
349 this Rule, an item of ~~machin~~Machinery or ~~equipment~~E-  
350 quipment qualifies for exemption only if its primary  
351 purpose is for use in an Agricultural Operation. “Pri-  
352 mary purpose” means the purpose for which an item of  
353 tangible personal property is used more than one-half of  
354 the total amount of time that the item is in use. Alterna-  
355 tively, instead of time, the purpose may be measured in  
356 terms of other applicable criteria such as the number of  
357 items produced. The Department of Revenue may consider  
358 any reasonable methodology for measuring the primary  
359 purpose of ~~machin~~Machinery or ~~equipment~~Equipment for  
360 which the primary purpose is not readily identifiable.

361       **(b) Parts withdrawn from inventory.** Miscellaneous  
362 parts for which the ultimate use is unknown at the time of  
363 purchase are eligible for the exemption as ~~components or~~  
364 ~~repair~~Repair, ~~or replacement~~Replacement, or Component  
365 ~~part~~Parts. However, use tax must be accrued and remitted  
366 if parts are withdrawn from the inventory of parts and  
367 used for any purpose other than to maintain, repair,  
368 restore, install, or upgrade ~~machinery or equipment that is~~  
369 ~~used in the production of agriculture~~Agricultural Ma-  
370 chinery and Equipment.

371       **(6) Exemption for energy used in agriculture**En-  
372 ergy Used in Agriculture. Sales of energy used in  
373 ~~agriculture~~Energy Used in Agriculture, as defined in this  
374 Rule, to ~~qualified agricultural producer~~Qualified Agricul-  
375 tural Producers holding a GATE Certificate are exempt  
376 from state sales and use tax and all ~~local sales and use~~  
377 ~~tax~~Local Sales and Use Tax.

378       **(a) Metered energy.** In order to purchase metered  
379 ~~energy used in agriculture~~Energy Used in Agriculture  
380 without the payment of tax, the energy must be metered  
381 separately from energy used for non-agricultural purposes.  
382 ~~Qualified agricultural producer~~Qualified Agricultural  
383 Producers must present to their energy providers the  
384 GATE certificate and the account numbers and service  
385 addresses of meters to which the exemption applies.

386       **1. De minimis use exception.** If a single meter sup-  
387 plies energy for ~~agricultural purposes~~Agricultural  
388 Purposes and energy for de minimis non-agricultural

389 purposes, a GATE Certificate holder is permitted to  
390 purchase all of the energy supplied from the meter without  
391 the payment of tax, so long as that meter does not supply  
392 energy for a personal residence. De minimis use means use  
393 that represents ten (10) percent or less of the total amount  
394 of energy supplied by a single meter.

395 **(b) Non-metered energy.** ~~Qualified agricultural pro-~~  
396 ~~ducer~~Qualified Agricultural Producers holding the GATE  
397 Certificate are permitted to purchase non-metered energy,  
398 such as propane and wood, tax exempt. Producers, how-  
399 ever, must accrue and remit use tax on any portion of the  
400 energy that is not used for ~~agricultural purposes~~Agricul-  
401 tural Purposes.

402 **(c) Examples of energy used in agriculture**Energy  
403 Used in Agriculture. ~~Energy used in agriculture~~Energy  
404 Used in Agriculture includes but is not limited to:

405 1. Off-road diesel, propane, butane, electricity, natural  
406 gas, wood, wood products, wood by-products and liquefied  
407 petroleum gas;

408 2. Fuel used in structures in which broilers, pullets, or  
409 other poultry are raised, in which swine are raised, in  
410 which dairy ~~animal~~Animals are raised or milked or where  
411 dairy products are stored on a ~~farm~~Farm, in which ~~agri-~~  
412 ~~cultural products~~Agricultural Products are stored, and in  
413 which plants, seedlings, nursery stock, or floral products  
414 are raised primarily for the purpose of making sales of  
415 such plants, seedlings, nursery stock, or floral products for  
416 resale;

417       3. Fuel for the operation of an irrigation system which is  
418       used on a ~~farm~~Farm exclusively for the irrigation of  
419       ~~agricultural products~~Agricultural Products; and

420       4. Fuel used in the drying, cooking, or further processing  
421       of raw ~~agricultural products~~Agricultural Products.

422       **(d) Examples of non-exempt energy that is not**  
423       **exempt under O.C.G.A. § 48-8-3.3.**

424       1. Energy not used for ~~non-a~~Agricultural pPurposes;

425       2. Gasoline, clear diesel, and aviation gasoline;

426       3. Liquefied petroleum gas and special fuel (including  
427       compressed natural gas) when used to propel a ~~motor-~~  
428       ~~vehicle~~Motor Vehicle on the public highways;

429       4. Energy used for administrative activities; and

430       5. Energy used in a personal residence.

431       **(7) Certificates of Exemption.** Department of Reve-  
432       nue Agricultural Certificate of Exemption (Form ST-A1) is  
433       not valid for purchases occurring on or after January 1,  
434       2013.

435       **(a) GATE Certificate.** Any person making a sale or  
436       lease of ~~agricultural production inputs~~Agricultural Pro-  
437       duction Inputs, Agricultural Machinery and  
438       Equipment~~agricultural machinery or equipment~~, or  
439       ~~energy used in agriculture~~Energy Used in Agriculture  
440       must collect sales and use tax unless such person, in good  
441       faith, takes from the purchaser or lessee a ~~Georgia Agri-~~

442 ~~culture Tax Exemption (GATE) Certificate. Qualified~~  
443 ~~agricultural producer~~Qualified Agricultural Producers  
444 may obtain a GATE Certificate from the Georgia Depart-  
445 ment of Agriculture. GATE Certificate holders must meet  
446 the requirements of this Rule to qualify for the exemptions  
447 in O.C.G.A. § 48-8-3.3.

448 **(b) Refunds.** When tax is remitted on the purchase or  
449 lease of exempt Agricultural Production ~~Inputs,~~  
450 ~~machin~~Machinery, equipmentEquipment, or Eenergy  
451 Used in Agriculture, ~~qualified agricultural producer~~Qual-  
452 ified Agricultural Producers holding a GATE Certificate  
453 may apply to the Department of Revenue for a refund  
454 pursuant to O.C.G.A. § 48-2-35. For purchases occurring  
455 on or after January 1, 2013, tax will not be refunded unless  
456 the purchaser held a GATE Certificate at the time of  
457 purchase.

458 **(8) Non-transferability.** Exemptions under this Rule  
459 are non-transferable.

460 **(9) Manufacturers.** Every person defined as a “dealer”  
461 in O.C.G.A. § 48-8-2 is required to file a sales and use tax  
462 registration for each place of business in this state. A  
463 dealer that ~~performs~~qualifies for both manufacturing  
464 exemptions under O.C.G.A. § 48-8-3.2 and agricultural  
465 operationsagricultural exemptions under O.C.G.A. §  
466 48-8-3.3 at a single place of business may avail itself of the  
467 exemptions under either O.C.G.A. § 48-8-3.2 or O.C.G.A. §  
468 48-8-3.3, but not both, for that place of business in any one  
469 calendar year.

470       **(10) Contractors.** Notwithstanding subsection (c) of  
471       O.C.G.A. § Code Section 48-8-63, contractors ~~shall~~ will not  
472       incur any use tax on:

473       **(a)** Tangible personal property that a ~~qualified agricul-~~  
474       ~~tural producer~~ Qualified Agricultural Producer purchases  
475       tax-exempt under O.C.G.A. § 48-8-3.3 ~~this Code section~~ and  
476       furnishes to such contractor for use in the performance of  
477       an agricultural operation, so long as such property retains  
478       the character of tangible personal property and is returned  
479       to the ~~qualified agricultural producer~~ Qualified Agricul-  
480       tural Producer upon the completion of the contract; or

481       **(b)** Grain bins, irrigation equipment, and fencing or the  
482       ~~repair~~ Repair, ~~replacement~~ Replacement, or ~~component-~~  
483       ~~Component part~~ Parts to grain bins, irrigation equipment,  
484       or fencing that a ~~qualified agricultural producer~~ Qualified  
485       Agricultural Producer purchases tax-exempt under  
486       O.C.G.A. § 48-8-3.3 ~~this Code section~~ for use in an agri-  
487       cultural operation and furnishes to such contractor for  
488       installation into ~~real property~~ Real Property.

489       Authority: O.C.G.A. §§ 48-2-12, 48-8-3.3.